

Appl. No. 10/701,848
Response dated May 23, 2006
Reply to Office Action of Nov. 23, 2005

REMARKS

Claim 1-22 are now pending. The Examiner has rejected claims 1-22.

Applicants acknowledge with appreciation the telephone interview with the Examiner on May 19, 2006, during which the above amendments to claims 1 and 16 were discussed.

Claim Rejections under 35 U.S.C. § 102(e)

Claims 16-22 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Lajoie et al. (U.S. Pub. 2004/0015952A1). Applicants respectfully traverse the rejection.

With regard to the anticipation rejections, MPEP 2131 states, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed.Cir. 1987). MPEP 2131 also states, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Regarding independent claim 16 and its dependent claims (i.e., claims 17-22), amended claim 16 recites "[a] method for updating firmware or software in an electronic device having an operating system comprising a file system, the method comprising: receiving information for updating the firmware or software; with operating system support: storing the information for updating firmware or software in a location in the file system; and saving, in a memory reference, information identifying the location in the file system of the information for updating firmware or software; and without the operating system support: accessing the information identifying the location of the information for updating firmware or software in the file system; and updating firmware or software in the electronic device employing the stored information for updating firmware or software by using the information identifying the location of the information for updating firmware or software in the file system."

Applicants respectfully submit that the cited prior art, Lajoie, does not teach the claimed invention of amended claim 16. More specifically, for example and as discussed with the

Appl. No. 10/701,848

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Examiner, Lajoie, fails to teach, suggest or disclose, among other things, "an electronic device having an operating system comprising a file system" wherein without the operating system support, "information identifying the location of the information for updating firmware or software in the file system" can be accessed. Instead, Lajoie discloses a method of updating firmware in a device that does not have a file system. Furthermore, Lajoie discloses a method of updating firmware by copying the entire application program from the server to the memory while the system is running, i.e., the entire method is performed with the operating system support.

Therefore, Applicants respectfully submit that the Lajoie reference fails to anticipate Applicants' claim 16, for at least the reasons given above. Claim 16 is an independent claim having dependent claims 17-22. Applicants believe that claim 16 is allowable. Because claims 17-22 are dependent upon claim 16, Applicants respectfully submit that claims 17-22 are, therefore, also allowable, for at least the same reasons given with respect to claim 16. Applicants therefore respectfully request that the rejection of claims 16-22 under 35 U.S.C. § 102(e) be withdrawn.

Claim Rejections under 35 U.S.C. § 103(a)

Claims 1-15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lajoie in view of Marsh et al. (U.S. Pub. 2002/0073304). Applicants respectfully traverse the rejection.

With regard to an obviousness rejection, MPEP 2142 states that in order for a *prima facie* case of obviousness to be established, three basic criteria must be met, one of which is that the reference or combination of references must teach or suggest all the claim limitations. Further, MPEP 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability of the combination", and that "although a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so'" (citing *In re Mills*, 916 F. 2d 680, 16 USPQ 2d 1430 (Fed Cir. 1990)). Moreover, MPEP

Appl. No. 10/701,848

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2143.01 also states that the level of ordinary skill in the art cannot be relied upon to provide the suggestion....," citing *Al-Site Corp. v. VSI Int'l Inc.*, 174 F. 3d 1308, 50 USPQ 2d. 1161 (Fed Cir. 1999) is that the reference or combinations of references must teach or suggest all the claim limitations.

Regarding independent claim 1 and its dependent claims (i.e., claims 2-15), amended claim 1 recites "[a] system that facilitates updating of firmware in an electronic device with a file system, the system comprising: an electronic device comprising: at least one of volatile and non-volatile memory; loader software that supports a plurality of loaders, wherein, during operation, each of the plurality of loaders performs downloading of specific information for updating firmware; update software that supports retrieving the information for updating firmware in the electronic device; and communication software that administers communicating the information for updating firmware from a server."

Applicants respectfully submit that the cited prior art, Lajoie in view of Marsh, does not teach the claimed invention of amended claim 1. More specifically, for example and as discussed with the Examiner, Marsh, fails to teach, suggest or disclose, among other things, "loader software that supports a plurality of loaders, wherein, during operation, each loader performing a different functionality associated with downloading information for updating firmware." Instead, Marsh discloses only one system loader 410, which can be configured to perform a plurality of functionalities, which are not associated with downloading firmware.

Therefore, Applicants respectfully submit that the Lajoie reference fails to anticipate Applicants' claim 1, for at least the reasons given above. Claim 1 is an independent claim having dependent claims 2-15. Applicants believe that independent claim 1 is allowable. Because claims 2-15 are dependent claims of claim 1, Applicants respectfully submit that claims 2-15 are, therefore, also allowable for at least the same reasons given with respect to claim 1. Applicants therefore request that the rejection of claims 1-15 under 35 U.S.C. § 103(a) be withdrawn.

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Conclusion

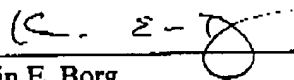
Applicants believe that all claims 1-22 are in condition for allowance. If Examiner disagrees or has any questions regarding this submission, Applicants invite Examiner to telephone the undersigned at (312) 775-8000.

A Notice of Allowability is courteously solicited.

The Commissioner is hereby authorized to charge additional fees or credit overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

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Respectfully submitted,



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